

CHAPTER 81-03-05.4 FEDERAL INCOME TAX DEDUCTION

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81-03-05.4-01. Definitions. The following definitions are only applicable in computing a taxpayer's federal income tax deduction pursuant to subdivision c of subsection 1 of North Dakota Century Code section 57-38-01.3:

1. "Apportionment factor" means a fraction, computed pursuant to North Dakota Century Code chapter 57-38, 57-38.1, or 57-59, used to divide business income of a multistate taxpayer among states.
2. "Federal" means the United States.
3. "Federal income tax deduction" means the adjustment provided for in subdivision c of subsection 1 of North Dakota Century Code section 57-38-01.3.
4. "Federal income tax liability" means the amount of federal income tax, excluding any federal alternative minimum tax, computed under chapter 1 of the Internal Revenue Code of 1986, as amended.
5. "Federal income tax ratio" means North Dakota taxable income divided by income relating to federal income tax accrued.
6. "Income relating to federal income tax paid" means total income less income relating to foreign tax credit.
7. "Income relating to foreign tax credit" means income directly attributable to either the foreign tax credit or the possessions credit.
8. "North Dakota taxable income" means income which has been apportioned to North Dakota pursuant to North Dakota Century Code chapters 57-38, 57-38.1, and 57-59; provided, however, that no adjustment should be made for the federal income tax deduction.
9. "Taxpayer" means a corporation that is required to file an income tax return in North Dakota.
10. "Total income" means the federal taxable income of those entities in the unitary group that are required to file a federal income tax return during the period in question, plus or minus the adjustments provided for in North Dakota Century Code section 57-38-01.3, with the exception

of subdivisions c and f of subsection 1 of North Dakota Century Code section 57-38-01.3.

History: Effective July 1, 1989; amended effective May 1, 1991; November 1, 1991.

General Authority: NDCC 57-38-57

Law Implemented: NDCC 57-38-01.3

81-03-05.4-02. Use of this rule. Any taxpayer entitled to claim a federal income tax deduction shall compute the deduction in accordance with this chapter.

History: Effective July 1, 1989; amended effective May 1, 1991.

General Authority: NDCC 57-38-57

Law Implemented: NDCC 57-38-01.3

81-03-05.4-03. Computation - Part I. Any taxpayer claiming a federal income tax deduction shall compute federal income tax liability on income which is taxable in North Dakota in the following manner:

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| 1. Consolidated federal income tax liability. | XXX |
| 2. Separate company pro forma federal income tax liability for all of the profit companies that are on the consolidated return and included in the unitary group. Use the method described in Internal Revenue Code section 1.1552-1(a)(2). | XXX |
| 3. Separate company pro forma federal income tax liability for all of the profit companies that are included on the consolidated return. | XXX |
| 4. Line 2 divided by line 3. | XXX |
| 5. Unitary companies' share of consolidated federal income tax liability (line 1 multiplied by line 4). | XXX |
| 6. Federal taxable income of the unitary companies which are included on the consolidated return. | XXX |
| 7. Amount of federal taxable income reported on line 6 that is not taxable in North Dakota. | XXX |
| 8. Federal taxable income attributable to North Dakota (line 6 minus line 7). | XXX |
| 9. Line 8 divided by line 6. | XXX |
| 10. Consolidated federal income tax liability on income which is taxable | XXX |

in North Dakota (line 5 multiplied by line 9).

History: Effective July 1, 1989; amended effective May 1, 1991; November 1, 1991.

General Authority: NDCC 57-38-57

Law Implemented: NDCC 57-38-01.3

81-03-05.4-04. Computation - Part II.

1. Any taxpayer that is filing as a member of a worldwide unitary group and claiming a foreign tax credit on its federal return shall compute its federal income tax deduction by multiplying the result of subsection 10 of section 81-03-05.4-03 by the federal income tax ratio. However, this subsection cannot be used if either or both North Dakota taxable income or income relating to federal income tax paid is less than zero.
2. Any taxpayer not described in subsection 1 shall compute its federal income tax deduction by multiplying the result of subsection 10 of section 81-03-05.4-03 by the apportionment factor.

History: Effective July 1, 1989; amended effective May 1, 1991.

General Authority: NDCC 57-38-57

Law Implemented: NDCC 57-38-01.3

81-03-05.4-05. Additional provisions.

1. If members of a unitary group filed more than one federal income tax return, subsections 1 through 10 in section 81-03-05.4-03 must be repeated for each federal income tax return and the result totaled before application of the income tax ratio or apportionment factor in 81-03-05.4-04.
2. A taxpayer may exclude subsections 1 through 4 in section 81-03-05.4-03 when:
 - a. A North Dakota return is filed using the combined report method and all corporations included in the federal consolidated return are included in the combined report.
 - b. A corporation does not file a federal consolidated return.
3. If federal alternative minimum tax is accrued and state alternative minimum tax is not, the federal minimum tax must be excluded from subsections 1 through 5 of section 81-03-05.4-03.

History: Effective May 1, 1991; amended effective November 1, 1991.

General Authority: NDCC 57-38-57

Law Implemented: NDCC 57-38-01.3